IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL APPLICATION NO. 1839 OF 2005
IN
WRIT PETITION NO. 4133 OF 1998

Office Notes, Office Memoranda of of Coram, appearances, Court's orders and Registrar's orders : Court's or Judge's orders

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Miss N.D. Buch for the applicants.

Mr. K.S. Bapat for the respondent No.1.

Ms. Vaidehi Mhaispurkar, A.G.P. for the State.

CORAM: P.V. KAKADE, J.

DATED: 13TH JANUARY, 2006

P.C.:

1. Heard advocate for the applicant petitioners as well as respondent Nos. 1 & 2 who are contesting parties.

2. This application is for recalling of the order dated 12.3.1999 for restoration of the writ petition to the file.

3. It appears from the record that the R & P of Writ Petition No. 4133 of 1998 came to be destroyed. It also appears from the record that Vakalatnama of respondent No.2 was not filed and on that basis the entire petition came to be dismissed. In my considered view, it would be sufficient

ground for restoration of the petition. The advocate for the respondent No.1 has filed affidavit in reply wherein he has stated that he has terminated the contract and, therefore, the complaint itself is not maintainable. However in my view, the issue of maintainability of the complaint would be adjudicated at the time of hearing of the petition itself and not at this time of application for restoration of the petition.

4. Hence, the application is made absolute in terms of prayer clauses (a) & (b).

Office to take steps to reconstruct the R & P of Writ Petition No. 4133 of 1998.

5. The relief pertaining to clause (b) is concerned, I am of the view that, it cannot be granted at this stage without going into the merits of the aspect as it is submitted on behalf of the respondent No.1 that the service contract is already terminated.

The Vakalatnama of Petitioner No.2 is already brought on record.

With these directions, the application stands disposed of.

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